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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

DLI PROPERTIES, LLC., Plaintiff and Appellant, v. WELLS FARGO BANK, N.A., Defendant and Respondent.	B280483 (Los Angeles County Super. Ct. No. BC635892)

APPEAL from an order of the Superior Court of Los Angeles County, Barbara M. Scheper, Judge. Affirmed.

Law Offices of Elkanah J. Burns and Elkanah J. Burns for Plaintiff and Appellant.

Anglin Flewelling Rasmussen Campbell & Trytten, Robert Collings Little, Robin C. Campbell, and Benjamin G. Diehl for Defendant and Respondent.

Plaintiff and appellant DLI Properties, LLC (DLI) appeals from an order of dismissal after the trial court sustained the demurrer of defendant and respondent Wells Fargo Bank, N.A. (Wells Fargo) to DLI's complaint to quiet title to certain real property and for declaratory relief. We conclude the trial court properly sustained the demurrer without leave to amend, and accordingly, affirm the order of dismissal.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. The Nonjudicial Foreclosure Sale

Pedro Martinez and Norma Perez owned the real property located at 2809 Estara Avenue in Los Angeles ("the Property"). Martinez and Perez obtained a loan in the amount of $480,000, which was secured by a deed of trust on the Property. Wells Fargo was the beneficiary of the deed of trust, and Barrett Daffin Frappeir Treder & Weiss LLP ("Trustee") was the trustee. At some point, Martinez and Perez defaulted on the loan, and foreclosure proceedings were initiated.

On November 12, 2015, Wells Fargo, through the Trustee, recorded a notice of default and election to sell under the deed of trust. After Martinez and Perez failed to cure the default, a notice of trustee's sale was recorded on March 15, 2016, and the trustee's sale was held on August 22, 2016. DLI was the highest bidder at the sale with a bid of $521,000. DLI tendered cashier's checks for the full amount of the purchase price, and the Trustee issued a receipt for the purchase price to DLI's agent.

The parties later discovered that, approximately one hour before the trustee's sale was conducted, Martinez had filed a Chapter 13 petition in bankruptcy court, resulting in an

automatic stay of the foreclosure proceedings.[1] Wells Fargo and the Trustee thereafter refused to complete the sale of the Property to DLI by issuing a trustee's deed upon sale.

On August 27, 2016, DLI filed a motion in the bankruptcy court for relief from the automatic stay. On September 28, 2016, the bankruptcy court granted DLI's motion. The court's order provided: "As to Movant, its successors, transferees and assigns," the stay is "[t]erminated as to the Debtor and the Debtor's bankruptcy estate," and is "[a]nnulled retroactively to the bankruptcy petition date." The order also stated: "Movant may enforce its remedies by completing the foreclosure sale of the Property and obtaining possession of the Property in accordance with applicable nonbankruptcy law, but may not pursue any deficiency claim against the Debtor or the property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501."

Following the bankruptcy court's order granting DLI's motion for relief, DLI offered to retender the funds that it had paid for the Property at the trustee's sale. However, Wells Fargo

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[1] The record on appeal includes copies of certain documents filed in the bankruptcy case, including the Martinez's August 22, 2016 petition, DLI's August 27, 2016 motion for relief from the automatic stay, and the bankruptcy court's September 28, 2016 order granting DLI's motion. On this court's own motion, we take judicial notice of these documents as "[r]ecords of . . . any court of record of the United States." (Evid. Code, § 452, subd. (d)(2).) We do not, however, take judicial notice of the truth of any factual assertions appearing in the parties' filings. (*Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 483; see also *Espinoza v. Calva* (2008) 169 Cal.App.4th 1393, 1396 [judicial notice may be taken of "the fact the pleadings were filed, but not of the truth of the statements contained in them"].)

and the Trustee refused to accept the retendered funds or to issue the trustee's deed upon sale to DLI.

II. DLI's Action Against Wells Fargo

On October 3, 2016, DLI filed this action against Wells Fargo, the Trustee, Martinez, and Perez. DLI's complaint alleged two causes of action for quiet title and declaratory relief. In its prayer for relief, DLI sought a judicial determination that it was the owner of the Property, and that the defendants had no right, title, or interest in the Property as of the date of the trustee's sale. On November 28, 2016, Wells Fargo filed a demurrer to the complaint on the ground that DLI had no claim to an interest in the Property, and thus, had failed to plead facts sufficient to constitute a claim for relief.

Following a hearing, the trial court sustained the demurrer to the complaint without leave to amend. The court concluded that DLI had failed to state a cause of action upon which relief could be granted because DLI had "no authority to force Wells Fargo to complete the [trustee's] sale." The court reasoned: "[T]he discovery of the bankruptcy filing . . . constituted an irregularity in the foreclosure process. Having discovered this defect prior to issuance of the trustee's deed, Wells Fargo could have elected to hold the sale in abeyance until relief from the stay was obtained and then complete the sale to [DLI] by issuance of the trustee's deed or rescind the sale and return [DLI's] money. Wells Fargo chose the latter option. It does not appear to the court that [DLI] has the power to require Wells Fargo to do otherwise." The trial court thereafter issued an order of

dismissal of the action as to Wells Fargo with prejudice.[2] DLI timely appealed from the dismissal order.

DISCUSSION

On appeal, DLI contends that the trial court erred in sustaining Wells Fargo's demurrer to its complaint because it stated causes of action for quiet title and declaratory relief. DLI argues that the bankruptcy court's order retroactively annulling the stay of the foreclosure proceedings obligated Wells Fargo to accept DLI's retendered funds and to issue the trustee's deed. DLI asserts that Wells Fargo's failure to comply with these obligations entitles DLI to seek a judgment quieting title to the Property.

I. Standard of Review

In reviewing the sufficiency of a complaint against a demurrer, we treat "'the demurrer as admitting all material facts properly pleaded.'" (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 810.) We give the complaint a reasonable interpretation and read the allegations in context. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) We also consider matters that may be judicially noticed. (*Ibid.*) When a demurrer is sustained, we determine de novo whether the complaint alleges facts sufficient to state a cause of action under any legal theory. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.) When a demurrer is sustained without leave to amend, we also decide whether there is a reasonable possibility the defect can be cured by amendment. (*Schifando v. City of Los Angeles*, *supra*, at p. 1081.) "If we find that an amendment could

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[2] At DLI's request, the trial court also dismissed the action as to the remaining defendants without prejudice.

cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. [Citation.] The plaintiff has the burden of proving that an amendment would cure the defect. [Citation.]" (*Ibid.*)

II. DLI's Complaint Fails to State a Claim Upon Which Relief Could Be Granted

DLI's complaint alleges two causes of action: quiet title and declaratory relief. To state a quiet title claim, the plaintiff must allege, among other facts, "[t]he title of the plaintiff as to which a determination . . . is sought and the basis of the title." (Code Civ. Proc., § 761.020, subd. (b); see *Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1193 ["[t]o prevail on a quiet title claim, a plaintiff must establish title to the property in dispute"].) To state a declaratory relief claim, the plaintiff must plead facts sufficient to show an "actual controversy relating to the legal rights and duties of the respective parties." (Code Civ. Proc., § 1060.) In this case, the determination of whether DLI stated an actionable claim for relief depends on whether DLI may assert a claim of title to the Property.

DLI contends that it acquired title to the Property when it was the successful bidder at the foreclosure sale, and that the court order annulling the stay of the foreclosure proceedings had the effect of retroactively validating the sale. DLI further claims that, once the stay was annulled, Wells Fargo was obligated to complete the foreclosure sale by accepting DLI's offer to retender the funds it previously had paid for the Property and by issuing the trustee's deed upon sale to DLI. Wells Fargo asserts that the foreclosure sale was void as a matter of law once the stay went into effect, and that the order annulling the stay did not apply to Wells Fargo or obligate it to perform any act because it was not a party to DLI's motion for relief from the stay.

A. The Effect of the Bankruptcy Court's Annulment Order on the Parties

To determine whether the complaint states a cause of action, we first consider the scope and effect of the bankruptcy court's order granting DLI's motion for relief from the automatic stay of the foreclosure proceedings. DLI argues that the order applied to both parties because it expressly stated that DLI could enforce its remedies by "completing the foreclosure sale" and "obtaining possession of the Property." Wells Fargo, on the other hand, asserts that the order solely applied to DLI as the moving party because it specified that the stay was annulled only "[a]s to Movant, its successors, transferees and assigns." We conclude that a reasonable reading of the order reflects that it was binding as to the Property, but it did not compel Wells Fargo to complete the sale of the Property to DLI. Rather, the order authorized DLI to pursue whatever remedies were available to it under "applicable nonbankruptcy law."

A petition for bankruptcy "operates as a stay, applicable to all entities, of . . . any act to obtain possession of property of the estate" and "any act to create, perfect, or enforce any lien against property of the estate." (11 U.S.C. § 362(a)(3), (a)(4).) "The automatic stay is self-executing, effective upon the filing of the bankruptcy petition. [Citations.]" (*In re Gruntz* (9th Cir. 2000) 202 F.3d 1074, 1081.) Accordingly, once a petition is filed, "[a]ctions taken in violation of the automatic stay are void." (*Burton v. Infinity Capital Mgmt.* (9th Cir. 2017) 862 F.3d 740, 747; see also *In re Schwartz* (9th Cir. 1992) 954 F.2d 569, 572-573 ["any action in violation of the automatic stay is void and of no effect"].) This includes a post-petition foreclosure sale of a debtor's property to a good faith purchaser for value and without notice of the bankruptcy proceedings. (*In re Fjeldsted* (9th Cir.

2003) 293 B.R. 12, 20 ["the foreclosure sale, which was held after Debtor filed her chapter 13 petition, was void"].) As the Ninth Circuit has stated, where a "trustee's sale violated the automatic stay and was void, transfer of good title to [a bona fide purchaser] was impossible." (*Id*. at p. 26.) In this case, because Martinez filed his petition prior to the trustee's sale of the Property, the sale violated the automatic stay and was therefore void.

While the automatic stay is self-executing, a bankruptcy court has the authority "[o]n request of a party in interest and after notice and a hearing," to "grant relief from the stay . . . such as by terminating, annulling, modifying, or conditioning such stay." (11 U.S.C. § 362(d).) "[T]he bankruptcy court has 'wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay.'" (*In re Fjeldsted*, *supra*, 293 B.R. at p. 21.) This gives the court "the power to ratify retroactively any violation of the automatic stay which would otherwise be void." (*In re Schwartz, supra,* 954 F.2d at p. 573; see also *In re Gurrola* (2005) 328 B.R. 158, 172 ["authorization for annulling the stay . . . has the effect of retroactively validating acts that otherwise violated the stay"].) Here, the bankruptcy court's order provided that the stay was "annulled retroactively to the bankruptcy petition date," and that "any postpetition acts taken by Movant to enforce its remedies regarding the Property do not constitute a violation of the stay." While DLI contends that the retroactive nature of the order validated the otherwise void foreclosure sale, Wells Fargo claims that the order did not relieve Wells Fargo from liability for actions taken in violation of the stay.

In general, "a final order lifting an automatic stay is binding as to the property or interest in question–the *res*–and its

scope is not limited to the particular parties before the court." (*Reusser v. Wachovia Bank, N.A.* (9th Cir. 2008) 525 F.3d 855, 861 (*Reusser*).) In *Reusser*, for instance, Wachovia Bank was the holder of the trust deed over the plaintiffs' property, and sought to foreclose on the property through Washington Mutual Bank, its loan servicing institution. (*Id.* at pp. 856-857.) When the plaintiffs filed a petition for bankruptcy, Washington Mutual (rather than Wachovia) brought a motion in bankruptcy court seeking relief from the automatic stay. (*Id.* at p. 857.) Because the court did not name Wachovia in its order granting the motion and allowing the foreclosure sale to proceed, the plaintiffs claimed that Wachovia violated the stay in foreclosing on the property. (*Id.* at p. 861.) The Ninth Circuit rejected this claim, stating: "[I]t is immaterial that the bankruptcy court order did not specifically name Wachovia. Rather, what matters is that it addressed the deed of trust held by Wachovia; the bankruptcy court order granted relief both 'as to the enforcement of the deed of trust' owned by Wachovia and 'as to the [plaintiffs'] property.' Accordingly, we are satisfied that the order granted Wachovia the right to foreclose on the property." (*Ibid.*)

The Ninth Circuit's decision in *Reusser* reflects that the scope of relief granted in a bankruptcy court's order lifting a stay is not necessarily limited to the particular party that requested the relief, but rather is determined by the language of the order. Here, the court's order stated that, "as to Movant, its successors, transferees and assigns," the stay was "[t]erminated as to the Debtor and the Debtor's bankruptcy estate," and "[a]nnulled retroactively to the bankruptcy petition date." The order did not, however, state that the annulment of the stay applied to the enforcement of the deed of trust on the Property, as the order did

in *Reusser*, or that any post-petition actions taken by the holder of the trust deed to enforce its remedies would not violate the stay. Even assuming, without deciding, that the annulment order permitted Wells Fargo to enforce its remedies under the deed of trust by foreclosing on the Property, the order did not direct Wells Fargo to complete the foreclosure sale to DLI by accepting the retendered funds, issuing a trustee's deed, or performing any other act. Rather, the order simply provided that DLI "may enforce its remedies by completing the foreclosure sale of the Property and obtaining possession of the Property in accordance with applicable nonbankruptcy law." Because DLI was the successful bidder in a post-petition foreclosure sale conducted under the power of sale in a trust deed, its rights and remedies were governed by California's statutory scheme regulating nonjudicial foreclosures sales.

B. The Scope of DLI's Available Remedies Under Applicable California Law

"Civil Code sections 2924 through 2924k . . . govern nonjudicial foreclosure sale pursuant to a power of sale contained in a deed of trust. 'The purposes of this comprehensive scheme are threefold: (1) to provide the creditor/beneficiary with a quick, inexpensive and efficient remedy against a defaulting debtor/trustor; (2) to protect the debtor/trustor from wrongful loss of the property; and (3) to ensure that a properly conducted sale is final between the parties and conclusive as to a bona fide purchaser.' [Citation.]' [Citation.]" (*Biancalana v. T.D. Service Co.* (2011) 56 Cal.4th 807, 813-814.)

"'The purchaser at a foreclosure sale takes title by a trustee's deed. If the trustee's deed recites that all statutory notice requirements and procedures required by law for the conduct of the foreclosure have been satisfied, a rebuttable

presumption arises that the sale has been conducted regularly and properly; this presumption is conclusive as to a bona fide purchaser. [Citations.]' [Citation.]" (*Biancalana v. T.D. Service Co.*, *supra*, 56 Cal.4th at p. 814.) "Although a nonjudicial foreclosure sale is generally complete upon acceptance of a bid by the trustee, the conclusive presumption does not apply until a trustee's deed is delivered. Thus, if there is a defect in the procedure which is discovered after the bid is accepted, but prior to delivery of the trustee's deed, the trustee may abort a sale to a bona fide purchaser, return the purchase price and restart the foreclosure process. [Citations.]" (*Moeller v. Lien* (1994) 25 Cal.App.4th 822, 830, accord *Biancalana v. T.D. Service Co.*, *supra*, at p. 814 [where the trustee discovers an irregularity in the foreclosure sale process before delivering the trustee's deed, the conclusive presumption does not apply].)

In *Residential Capital v. Cal-Western Reconveyance Corp.* (2003) 108 Cal.App.4th 807 (*Residential Capital*), for example, the plaintiff was the successful bidder at a nonjudicial foreclosure sale conducted under the power of sale in a trust deed, and tendered a cashier's check to the trustee under the deed to cover its bid. (*Id.* at pp. 811-812.) When the trustee later realized that, prior to the sale, the trustor and the beneficiary had agreed to postpone the sale in accordance with applicable law, the trustee refused to issue the trustee's deed to the plaintiff and instead refunded the amount tendered on the bid, plus interest. (*Id.* at p. 812.) The plaintiff thereafter sued the trustee and beneficiary for breach of contract. (*Ibid.*) The plaintiff did not dispute that the foreclosure sale was unenforceable as to the trustor, and thus, the trustor was entitled to retain title to the property. (*Id.* at p. 820.) Rather, the plaintiff claimed that, by making the

prevailing bid at the foreclosure sale, it entered into a binding contract with the trustee and the beneficiary to purchase the property, thereby entitling it to breach of contract damages. (*Id*. at pp. 811, 820.)

In considering the plaintiff's available remedies as the high bidder at the foreclosure sale, the Court of Appeal in *Residential Capital* explained that the rights of such a bidder are determined "by principles of interpretation of the statutory scheme setting forth the rules of trust deed nonjudicial foreclosure sales." (*Residential Capital*, *supra*, 108 Cal.App.4th at p. 821.) Applying those principles, the court concluded that the agreement between the trustor and the beneficiary to postpone the foreclosure sale, which was authorized by statute, constituted a procedural irregularity in the sale. (*Id*. at pp. 822-823.) The court further concluded that, "as a matter of law, although [the plaintiff's] bid was accepted at the nonjudicial foreclosure sale, the discovery of the agreement to postpone the sale by the trustor and beneficiary before the trustee's deed was issued limits [the plaintiff's] relief to return of its money plus interest." The court noted that "[i]t might be a different case had the trustee's deed been issued to [the plaintiff], which might have entitled it to a similar status as a bona fide purchaser would have, entitled to the conclusive presumptions of title under [Civil Code] section 2924. However, the trustee's deed was not issued, and [the plaintiff] has not brought itself within the intent of the statutory scheme that 'the sanctity of title of a bona fide purchaser be protected.'" (*Id*. at p. 823.) As a result, "the return of the purchase price, plus accrued interest, as received, was the only remedy to which [the plaintiff] was entitled." (*Id*. at p. 824; see also *Biancalana v. T.D. Service Co.*, *supra*, 56 Cal.4th at p. 820 [where a trustee at a

foreclosure sale discovered its error in submitting an incorrect opening bid by the lender prior to issuing the trustee's deed to the prevailing bidder, "the trustee was authorized to void the sale"]; *Angell v. Superior Court* (1999) 73 Cal.App.4th 691, 702 [discovery of an irregularity in the foreclosure process prior to the delivery of the trustee's deed "allowed the trustee to abort the sale without further liability, provided . . . that the trustee return[ed] the consideration paid by the successful bidder, plus interest"].)

In this case, each cause of action in DLI's complaint is premised on its contention that the Trustee's acceptance of its bid and payment was sufficient to complete the foreclosure sale, and thus, to give DLI a claim of title to the Property. However, based on the allegations in the complaint, Martinez's filing of the bankruptcy petition was discovered before the trustee's deed was issued to DLI. Where, as here, a defect or irregularity in the foreclosure process is discovered after the bid is accepted, but prior to delivery of the trustee's deed, the trustee may void the sale and return the purchase price. Here, the sale was void as a matter of law as soon as it was conducted because it violated the automatic stay that went into effect when the bankruptcy petition was filed. The filing of the petition and resulting automatic stay therefore constituted an irregularity in the foreclosure sale process, which entitled Wells Fargo and the Trustee to abort the sale, withhold the trustee's deed, and return the purchase price to DLI, plus accrued interest.[3]

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[3] The cases on which DLI relies – *In re Cruz* (9th Cir. 2014) 516 B.R. 594 and *In re Funes* (C.D. Cal. Dec. 4, 2014) 2014 U.S. Dist. LEXIS 168961 – do not compel a different conclusion. In each case, the court recognized that the successful bidder at a

When the complaint is read as a whole and in context, it alleges that, upon discovery of Martinez's bankruptcy petition, Wells Fargo and the Trustee cancelled, rescinded, or otherwise aborted the foreclosure sale by "refusing to complete the sale" and "to issue a Trustee's Deed Upon Sale . . . to [DLI]." While the complaint does not state whether the purchase price, plus interest, was refunded to DLI, it does allege that, after the bankruptcy stay was annulled, DLI "retendered the funds for the sale," but Wells Fargo and the Trustee "refused to accept them." Accordingly, based on the well-pleaded allegations in the complaint, the foreclosure sale of the Property was voided prior to the issuance of a trustee's deed; as a result, the only common law or statutory remedy to which DLI was entitled was the return of the money that it paid for the Property, plus accrued interest. Because each cause of action in the complaint seeks a remedy that, by law, is unavailable to DLI, the trial court properly sustained Wells Fargo's demurrer to the complaint for failure to state a cause of action upon which relief could be granted.

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foreclosure sale had standing to seek relief from an automatic bankruptcy stay even without having received a trustee's deed because it was a "party in interest" within the meaning of 11 U.S.C. § 362(d). (*In re Cruz*, *supra*, at p. 602; *In re Funes*, *supra*, at p. *9, fn. 2.) Neither case addressed whether, under California law governing nonjudicial foreclosures, a trustee could lawfully cancel or abort a foreclosure sale due to a procedural irregularity discovered prior to the issuance of the trustee's deed.

III. DLI Has Not Shown That Amending the Complaint Could State An Actionable Claim for Relief

Where the trial court sustains a demurrer without leave to amend, "the burden falls upon the plaintiff to show what facts he or she could plead to cure the existing defects in the complaint." (*Das v. Bank of America, N.A.* (2010) 186 Cal.App.4th 727, 734; see *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126 [burden of proving there is a reasonable possibility the defect can be cured by amendment "'is squarely on the plaintiff'"].) To satisfy this burden, the plaintiff must set forth "factual and specific, not vague or conclusionary" allegations that "sufficiently state all required elements of [the] cause of action." (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43-44.) "Where the [plaintiff] offers no allegations to support the possibility of amendment and no legal authority showing the viability of new causes of action, there is no basis for finding the trial court abused its discretion when it sustained the demurrer without leave to amend. [Citations.]" (*Id*. at p. 44.)

In its reply brief, DLI asserts that the trial court should have granted leave to amend the complaint "to the extent greater clarity was required." However, DLI does not explain how the complaint could be amended to state a claim upon which relief could be granted, nor does it offer any factual allegations or legal theories that could support the possibility of an amendment. Instead, DLI simply reiterates in its reply brief that its "quiet title claim was adequately pled." Because DLI has not shown a reasonably possibility that an amendment could cure the defects in its complaint, the trial court did not abuse its discretion in sustaining the demurrer without leave to amend.

DISPOSITION

The order of dismissal is affirmed. Wells Fargo shall recover its costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

STONE, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.